United Nations A/CN.4/L.856

General Assembly

Distr.: Limited
28 July 2015

Original: English

**International Law Commission**
**Sixty-seventh session**
Geneva, 4 May-5 June and 6 July-7 August 2015

# Draft report of the International Law Commission on the work of its sixty-seventh session

*Rapporteur*: Mr. M. **Vázquez-Bermúdez**

## Chapter II
## Summary of the work of the Commission at its sixty-seventh session

1. With regard to the topic "**Protection of the atmosphere**", the Commission had before it the second report of the Special Rapporteur (A/CN.4/681 and Corr.1 (Chinese only)), which, upon a further analysis of the draft guidelines submitted in the first report, presented a set of revised draft guidelines relating to the Use of terms, the Scope of the draft guidelines, and the Common concern of humankind, as well as draft guidelines on the General obligation of States to protect the atmosphere and on International cooperation. Following its debate on the report, the Commission decided to refer draft guidelines 1, 2, 3 and 5, as contained in the Special Rapporteur's second report to the Drafting Committee, with the understanding that draft guideline 3 be considered in the context of a possible preamble. Upon consideration of the report of the Drafting Committee, the Commission provisionally adopted draft guidelines 1, 2 and 5 and four preambular paragraphs, together with commentaries (chap. IV).

2. As regards the topic "**Identification of customary international law**", the Commission had before it the third report of the Special Rapporteur (A/CN.4/682), which contained, *inter alia*, additional paragraphs to three of the draft conclusions proposed in the second report and five new draft conclusions relating respectively to the relationship between the two constituent elements of customary international law, the role of inaction, the role of treaties and resolutions, judicial decisions and writings, the relevance of international organizations, as well as particular custom and the persistent objector. Following the debate in Plenary, the Commission decided to refer the draft conclusions contained in the third report to the Drafting Committee. The Commission took note of the interim report of the Drafting Committee, including the eight draft conclusions and additional paragraphs for two of the draft conclusions provisionally adopted by the Drafting Committee during the last session, which was submitted to the Commission for information (chap. V).

GE.15-12760 (E) 290715 030815

Please recycle

3. With respect to the topic "**Crimes against humanity**", the Commission considered the first report of the Special Rapporteur (A/CN.4/680), which contained, *inter alia*, two draft articles relating respectively to the prevention and punishment of crimes against humanity and to the definition of crimes against humanity. Following the debate in Plenary, the Commission decided to refer the draft articles proposed by the Special Rapporteur to the Drafting Committee. Upon consideration of the report of the Drafting Committee, the Commission provisionally adopted four draft articles, together with commentaries thereto (chap. VI).

4. As regards the topic "**Subsequent agreements and subsequent practice in relation to the interpretation of treaties**", the Commission had before it the third report of the Special Rapporteur (A/CN.4/683), which contained, *inter alia*, one draft conclusion relating to constituent instruments of international organizations. Following the debate in Plenary, the Commission decided to refer the draft conclusion proposed by the Special Rapporteur to the Drafting Committee. Upon consideration of the report of the Drafting Committee, the Commission provisionally adopted draft conclusion 11, together with commentary thereto (chap. VII).

5. With respect to the topic "**Protection of the environment in relation to armed conflicts**", the Commission had before it the second report of the Special Rapporteur (A/CN.4/685), which, *inter alia*, identified and examined existing rules of armed conflict directly relevant to the protection of the environment in relation to armed conflict. The report contained five draft principles and three draft preambular paragraphs relating to the scope and purpose of the draft principles as well as use of terms. Following the debate in Plenary, the Commission decided to refer the draft preambular paragraphs and the draft principles, as contained in the report of the Special Rapporteur, to the Drafting Committee, with the understanding that the provision on "Use of terms" was referred for the purpose of facilitating discussions and to be left pending by the Drafting Committee at this stage. The Commission took note of the interim report of the Chairman of the Drafting Committee, including the ... draft principles provisionally adopted by the Committee, which was presented to the Commission for information (chap. VIII).

6. In relation to the topic "**Immunity of State officials from foreign criminal jurisdiction**", the Commission had before it the fourth report of the Special Rapporteur (A/CN.4/686), which was devoted to the consideration of the remaining aspects of the material scope of immunity *ratione materiae*, namely what constituted an "act performed in an official capacity, and its temporal scope. The report contained proposals of draft article 2(f) defining an "act performed in an official capacity" and draft article 6 on scope of immunity *ratione materiae*. Following the debate in Plenary, the Commission decided to refer the draft two draft articles to the Drafting Committee. The Commission took note of the interim report of the Chairman of the Drafting Committee, including the ... draft articles provisionally adopted by the Committee, which was presented to the Commission for information (chap. IX).

7. As regards the topic "**Provisional application of treaties**", the Commission had before it the third report of the Special Rapporteur (A/CN.4/687) which considered the relationship of provisional application to other provisions of the Vienna Convention on the Law of Treaties, of 1969, and the question of provisional application with regard to international organizations. The Commission also had before it a memorandum (A/CN.4/676), prepared by the Secretariat, on provisional application under the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, of 1986. The debate revealed support for undertaking further analysis of the legal effects of the provisional application of treaties, including its termination, and the effect of the application of other provisions of the Vienna Convention on the Law of Treaties, of 1969. The

Commission further referred the six draft guidelines, proposed by the Special Rapporteur, to the Drafting Committee. The Commission took note of the interim report of the Chairman of the Drafting Committee, including the ... draft articles provisionally adopted by the Committee, which was presented to the Commission for information (chap. X).

8. In relation to the topic "**The Most-Favoured-Nation clause**", the Commission received and welcomed with appreciation the final report on the work of the Study Group on the Most Favoured-Nation clause and endorsed in paragraphs ... to ... the summary conclusions of the Study Group. The Commission commended the final report to the attention of the General Assembly, and encouraged its widest possible dissemination. The Commission has thus completed its consideration of the topic (chap. ...).

9. The Commission established a Planning Group to consider its programme, procedures and working methods (chap. ..., sect. ...). The Commission decided to include the topic "*Jus cogens*" in its programme of work, and to appoint Mr. Dire Tladi as Special Rapporteur for the topic (chap. ..., sect. ...).

10. The Commission continued its exchange of information with the International Court of Justice, the Asian-African Legal Consultative Organization, the Inter-American Juridical Committee, the Committee of Legal Advisers on Public International Law of the Council of Europe and the African Union Commission on International Law. The United Nations High Commissioner for Human Rights also addressed the Commission. An informal exchange of views was held between members of the Commission and the International Committee of the Red Cross.

11. The Commission decided that its sixty-eighth session be held in Geneva from ... May to ... June and ... July to ... August 2016 (chap. ..., sect. ...).